



In The Matter of

DEBORAH GREENHORN,

ARB CASE NO. 98-118

COMPLAINANT,

ALJ CASE NO. 97-STA-18

v.

DATE: August 20, 1998

ARROW STAGE LINES,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This case arises under the “whistleblower” provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. §31105 (West 1996), and applicable regulations at 29 C.F.R. Part 1978 (1997). Complainant, Deborah Greenhorn, alleged that on December 31, 1996, Respondent, Arrow Stage Lines (Arrow), terminated her employment as a part-time motor coach operator because she had filed a formal complaint with the Occupational Safety and Health Administration (OSHA) on December 30, 1998, about an uncovered oil pit in the bus maintenance area, and had raised complaints earlier with her supervisors about a leaking windshield and excessive driving hours. Arrow responded that it terminated Greenhorn because she had two preventable accidents during her six-month probationary period.

On April 23, 1998, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. and O.) dismissing the complaint. The ALJ found that while Greenhorn engaged in protected activity under the STAA in raising internal safety complaints, her filing the formal complaint with OSHA did not constitute protected activity under the STAA. He concluded that Greenhorn failed to meet her burden of proving that she was terminated for engaging in protected activity. R. D. and O. at 8.

The ALJ’s factual findings, including his credibility determinations, are supported by substantial evidence on the record considered as a whole, and therefore are conclusive.^{1/} 29 C.F.R. §1978.109(c)(3). His legal conclusions are consistent with applicable law and also are accepted.

^{1/} The findings are well documented with one minor exception. At page 5 of the R.D. and O., the ALJ incorrectly referred to Arrow’s termination letter as “CX 3.” The termination letter was admitted into the record as Complainant’s Exhibit 4. Transcript at 14.

We disagree with Greenhorn's argument that the ALJ erred in not accepting the Secretary's preliminary finding of jurisdiction over Greenhorn's oil pit OSHA complaint, even if the OSHA complaint was referenced in OSHA's investigation of Greenhorn's STAA complaint. It is well established that once a hearing is requested, the ALJ conducts a *de novo* hearing and the preliminary findings are not accorded any weight. *Asst. Sec. and Moravec v. HC & M Transportation*, Case No. 90-STA-44, Sec. Dec., Jan. 6, 1992, slip op. at 5 and cases cited therein. We agree with the ALJ that the report of an uncovered oil pit is not a STAA violation, even if it may be actionable under other statutes.

Accordingly, the appended ALJ's recommended decision is adopted, and the complaint **IS DISMISSED.**

SO ORDERED.

PAUL GREENBERG

Member

CYNTHIA L. ATTWOOD

Acting Member